

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
) Administrative Order on Consent
BAD RIVER BAND OF LAKE) Under Section 309(a) of the Clean Water
SUPERIOR TRIBE OF CHIPPEWA) Act, 33 U.S.C. § 1319(a)
INDIANS)
)
<i>For the Bad River Wastewater Treatment</i>)
<i>Plant, NPDES Permit No. WI-0036587; and</i>)
<i>Birch Hill Stabilization Lagoon, NPDES</i>)
<i>No. WI-0036579</i>)
)
Respondent)

I. INTRODUCTION

1. The U.S. Environmental Protection Agency (“EPA”) makes the findings of fact set forth below (Section IV) and is issuing this Administrative Order on Consent (“Order on Consent” or “Order”) to the Bad River Band of Lake Superior Tribe of Chippewa Indians (“Respondent”) under the authority of Section 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(a). The Administrator of EPA has delegated the authority to issue such Orders to the Regional Administrator of EPA, Region 5, who redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA, Region 5.
2. This Order is mutually entered into by EPA and Respondent.
3. At all times relevant to this Order, Respondent has owned and operated the Bad River Wastewater Treatment Plant, located at 54173 Birch Street, New Odanah, Wisconsin; and the Birch Hill Stabilization Lagoon, located in Birch Hill, Wisconsin (NW ¼ of NE ¼ of Section 36, T47N, R2W) (the “Facilities”).
4. EPA alleges that Respondent failed to comply with National Pollutant Discharge Elimination System (“NPDES”) Permit No. WI-0036587 at the Bad River Wastewater Treatment Plant; and Permit No. WI-0036579, at the Birch Hill Stabilization Lagoon, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
5. By entering into this Order, Respondent: (1) consents to EPA’s authority to issue this Order; (2) neither admits nor denies the factual allegations as set forth in this Order; (3) agrees to undertake all actions required by the terms and conditions of this Order; and (4) agrees not to contest the authority of EPA to issue this Order or the validity of any terms or conditions in this Order.

6. For the purposes of this Order only, Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

II. STATUTORY AUTHORITY

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except, *inter alia*, in compliance with an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
8. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to navigable waters. Violation of an NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
9. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), provides that whenever EPA finds that any person is in violation of requirements of, *inter alia*, Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and 1342, or is in violation of any condition or limitation that implements those sections in an NPDES permit, EPA shall issue an order requiring such person to comply with such requirements, conditions, or limitations. Section 309(a)(5) of the CWA, 33 U.S.C. § 1319(a)(5), requires that any such order shall specify a time for compliance that EPA determines to be reasonable taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

III. DEFINITIONS

10. All terms used, but not defined, in this Order have the meanings provided to them in the CWA, 33 U.S.C. § 1251 *et seq.*, and the effective EPA regulations promulgated under the CWA.
11. “Act” or “CWA” means the Clean Water Act, 33 U.S.C. § 1251 *et seq.*
12. “Bad River Facility” means the Bad River Wastewater Treatment Plant, located at 54173 Birch Street, New Odanah, Wisconsin.
13. “Birch Hill Facility” means the Birch Hill Stabilization Lagoon, located in Birch Hill, Wisconsin, (NW ¼ of NE ¼ of Section 36, T47N, R2W).
14. “Day” or “days” means a calendar day or calendar days unless expressly stated to be a business day. When computing any period of time under this Order, should the last day fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

15. "Discharge of a pollutant," as defined in Section 502(12) of the CWA, means *inter alia*, "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).
16. "Effective Date" has the definition provided in Section VIII of this Order.
17. "EPA" means the United States Environmental Protection Agency.
18. "Facilities" means the Bad River Wastewater Treatment Plant and the Birch Hill Stabilization Lagoon.
19. "Navigable waters," as defined in Section 502(7) of the CWA, means "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).
20. "NPDES Permit" and "Permit" mean the permit issued in accordance with the National Pollutant Discharge Elimination System (NPDES) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. In this Order, these terms mean NPDES Permit No. WI-0036587 issued to Respondent for the Bad River Wastewater Treatment Plant with the effective date of November 4, 2013, and the expiration date of October 28, 2018; and Permit No. WI-0036579, issued to Respondent for the Birch Hill Stabilization Lagoon with the effective date of November 4, 2013, and the expiration date of October 28, 2018. Both permits have been administratively continued pending permit renewal. For purposes of Sections IV through IX of this Order, "Permit" or "Permits" also means any subsequent NPDES permits issued to Respondent for the Facilities, until such time as this Order is terminated.
21. "Order on Consent" and "Order" means this document, all attachments hereto, and all subsequent modifications thereto, including incorporated submissions from Respondent, as described in paragraph 62.
22. "Outfall" means a type of "point source," as that term is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), that serves as a discharge point from the facility. "Outfall" followed by an Arabic numeral means that Outfall assigned that number in Respondent's NPDES permits.
23. "Paragraph" means a portion of this Order identified by an Arabic numeral.
24. "Parties" means the EPA and Respondent.
25. "Person," as defined in Section 502(5) of the CWA, means an "individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body." 33 U.S.C. § 1362(5). A "municipality," as defined in Section 502(4) of the CWA, includes "an Indian tribe or an authorized Indian tribal organization." 33 U.S.C. § 1362(4).

26. “Point source,” as defined in Section 502(14) of the CWA, means “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).
27. “Pollutant,” as defined in Section 502(6) of the CWA, means “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).
28. “Publicly Owned Treatment Works” or “POTW” means a treatment works, as defined in Section 212 of the CWA, 33 U.S.C. § 1292(2), that is owned by a State, Tribe, or a municipality (as defined in Section 502(4) of the CWA, 33 U.S.C. § 1362(4)). Pursuant to 40 C.F.R. § 403.3(q), the definition of POTWs includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the CWA, 33 U.S.C. § 1362(4), that has jurisdiction over indirect and direct discharges to such a treatment works.
29. “Respondent” means the Bad River Band of Lake Superior Tribe of Chippewa Indians.
30. The regulation at 40 C.F.R. § 122.2 (1993) defines the term “waters of the United States,” as
- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
 - (b) All interstate waters, including interstate “wetlands;”
 - (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
 - (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
 - (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
 - (f) The territorial sea; and
 - (g) “Wetlands” adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the

requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

31. "Work" means any and all activities Respondent is required to undertake and accomplish to achieve compliance under this Order.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

32. Bad River Band of Lake Superior Tribe of Chippewa Indians ("Respondent") is a federally recognized Indian tribe.
33. For purposes of federal enforcement, the Respondent is a "person" as that term is defined in sections 502(4) and (5) of the Act, 33 U.S.C. §§ 1362(4) and (5), and 40 C.F.R. § 122.2.
34. At all times relevant to this Order, Respondent owned and operated the Bad River Wastewater Treatment Plant and Birch Hill Stabilization Lagoon.
35. At all times relevant to this Order, Bad River Wastewater Treatment Plant Outfall No. 002 discharged *E. coli*, biochemical oxygen demand (BOD) (5-day, 20 deg. C), phosphorus, and total suspended solids into the Bad River.
36. Outfall No. 002 at the Bad River Wastewater Treatment Plant is a "point source," as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
37. At all times relevant to this Order, Birch Hill Stabilization Lagoon Outfall No. 001 discharged *E. coli*, biochemical oxygen demand (BOD) (5-day, 20 deg. C), and total suspended solids into Birch Hill Swamp.
38. Outfall No. 001 at the Birch Hill Stabilization Lagoon is a "point source," as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
39. *E. coli*, biochemical oxygen demand (BOD) (5-day, 20 deg. C), phosphorus, and total suspended solids are "pollutants," as defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
40. The discharges described in paragraphs 35 and 37 are "discharges of a pollutant," as defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

41. The Bad River is a “navigable water” within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and “water of the United States” within the meaning of 40 C.F.R. § 122.2 (1993).
42. At all times relevant to this Order, the outfall at the Bad River Wastewater Treatment Plant acted as a point source of “discharges” of “pollutants” with its final wastewater discharge to the Bad River.
43. At all times relevant to this Order, the outfall at the Birch Hill Stabilization Lagoon acted as a point source of “discharges” of “pollutants” with its final wastewater discharge to Birch Hill Swamp, thence to an unnamed tributary of the Potato River, thence to the Potato River, thence to the Bad River.
44. Because Respondent owned or operated facilities with outfalls that acted as point sources for the discharge of pollutants to navigable waters, Respondent and the Facilities have been subject to the CWA at all times relevant to this Order. Thus, any such discharge has been and is subject to the specific terms and conditions prescribed in the applicable permit.
45. Respondent applied for and was issued NPDES permits No. WI-0036587 and WI-0036579, under Section 402 of the CWA, 33 U.S.C. § 1342, which became effective on November 4, 2013. At all times relevant to this Order, Respondent was authorized to discharge pollutants from the facility to navigable waters only in compliance with the specific terms and conditions of the Permits.
46. The Permits require Respondent to sample and test its effluent and monitor its compliance with Permit conditions and applicable regulations, according to specific procedures. The Permits also require Respondent to file certified Discharge Monitoring Reports (“DMRs”) of the results of monitoring and Noncompliance Reports with EPA as appropriate.
47. The Permits contain effluent limitations that place certain limitations on the quality and quantity of effluent discharged by Respondent. The relevant discharge limitations are specified in Part I.A. of the Bad River Wastewater Treatment Plant Permit, and Part I.B. of the Birch Hill Stabilization Lagoon Permit, which are incorporated herein by reference.
48. Permittees must monitor discharges and report results in their DMRs, as required by their permits.
49. Certified DMRs filed by Respondent with EPA, as required by the Permits, show discharges of pollutants from the Facilities that exceed the permitted effluent limitations established in the Permits, which is incorporated herein by reference. The list of discharges of pollutants exceeding Permit effluent limitations is included in Attachment A to this Order.
50. Respondent is a person who discharged pollutants from point sources into navigable waters, in violation of its Permits. Accordingly, each instance in which Respondent discharged

pollutants to navigable waters in amounts exceeding the effluent limitations contained in the Permits is a violation of the Permits and Section 301 of the CWA, 33 U.S.C. § 1311.

V. ORDER ON CONSENT

51. Based on the foregoing findings and the authority vested in the undersigned Director, Enforcement and Compliance Assurance Division, it is hereby ordered and agreed to in accordance with Section 309(a) of the CWA, 33 U.S.C. § 1319(a), that Respondent comply with the following actions:

- A. Within 30 days of the effective date of this Order, Respondent must submit a corrective action plan (“CAP”) describing the specific actions to be taken to correct the effluent limitation violations specified in Attachment A to this Order. The plan must include a schedule to complete all work necessary to correct the violations within 180 days of the effective date of the Order.
- B. Within 180 days of the effective date of this Order, Respondent must fully implement CAP and address all violations.

VI. DOCUMENTATION AND SUBMISSIONS

52. Respondent must submit a status report to EPA within 30 days of the end of each calendar-year quarter (i.e., by January 31, April 30, July 31, and October 31), until this Order is terminated. The first status report will be due within 30 days of completion of the first full quarter after the effective date of this Order. Each status report must include: (a) a description of the actions that have been taken toward achieving compliance with this Order during the previous quarter; (b) an assessment of the effectiveness of such actions in preventing effluent violations; (c) a summary of all effluent violations that occurred during the previous quarter; and (d) an analysis of the cause of each such effluent violation.
53. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Order must be submitted to EPA electronically, to the extent possible. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested). Electronic submissions must be sent to the following addresses: r5weca@epa.gov, maraldo.dean@epa.gov, and wester.barbara@epa.gov. The subject line of all email correspondence must include the facility name, WI-0036587, and the subject of the deliverable. All electronically-submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied. Mailed submissions must be sent to the following addresses:

Attn: Dean Maraldo, EPA Case Manager
Water Enforcement Compliance Assurance Branch (ECW-15J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Attn: Barbara Wester
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

54. Within 10 days of the effective date of this Order, Respondent must designate a Project Coordinator and provide EPA's Case Manager (above) with the Project Coordinator's name, address, phone number, and email address.
55. In the event of a change to either the EPA Case Manager or the Project Coordinator, parties must provide notification in writing, pursuant to paragraphs 53 and 54 above, within 30 days after the change.
56. EPA may require additional status reports, or fewer status reports, for the purpose of documenting the progress of the Work performed pursuant to this Order or compliance with the Permit requirements. Should EPA require additional status reports, EPA will provide Respondent with at least 15 days from the date of EPA's request to submit the reports.
57. All reports, notifications, documentation, and submissions required by this Order must be signed by a duly authorized representative of Respondent as specified by 40 C.F.R. § 122.22(b) and (d) and must include the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
58. Respondent may not withhold information based on a claim that it is confidential. However, pursuant to 40 C.F.R. Part 2, Subpart B, Respondent may assert a claim of business confidentiality regarding any portion of the information submitted in response to this Order. The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). Certain information related to effluent data (as defined in 40 C.F.R. § 2.302(a)(2)) and NPDES permit applications may not be entitled to confidential treatment. 40 C.F.R. § 122.7. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a claim of business confidentiality when it submits the information, EPA may make the information available to the public without further notice. 40 C.F.R. § 2.203(c).

59. If Respondent finds at any time after submitting information that any portion of that information is false or incorrect, the signatory must notify EPA immediately. Knowingly submitting false information to EPA may subject Respondent to criminal prosecution under Section 309(c) of the CWA, 33 U.S.C. § 1319(c), as well as 18 U.S.C. § 1001 and 1341.
60. Submissions required by this Order must be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.
61. Absent an extension of time granted in writing by EPA, EPA may determine that late submissions fail to meet the requirements of this Order.
62. Upon EPA approval, submissions by Respondent are incorporated and enforceable as part of this Order. In case of inconsistency between any submission by Respondent and this document and its subsequent modifications, this document and its subsequent modifications shall control.
63. EPA may use any information submitted in response to this Order in support of an administrative, civil, or criminal action against Respondent.
64. The information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

VII. GENERAL PROVISIONS

65. Respondent has had the opportunity to confer with and submit information to EPA concerning the validity and provisions of this Order.
66. The terms of this Order are binding on Respondent and its assignees and successors. Respondent must give notice of this Order to any successors in interest prior to transferring ownership, and must simultaneously verify to EPA, at the address specified in paragraph 53, that Respondent has given the notice.
67. The undersigned signatory for each party has the authority to bind each respective party to the terms and conditions of this Order.
68. Failure to comply with this Order may subject Respondent to penalties up to \$54,833 per day for each violation (or as penalty levels may be later adjusted at 40 C.F.R. Part 19) pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19.
69. This Order does not affect Respondent's responsibility to comply with the CWA, its Permits, and any other local, state, and federal laws and regulations.
70. This Order does not restrict EPA's authority to enforce the Permits or any section of the CWA or its implementing regulations.

71. EPA reserves all rights and remedies, legal and equitable, available to address any violation cited in this Order and any other violation of the CWA or of this Order. Neither issuance of this Order by EPA nor compliance with its terms precludes further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited in this Order, for any other violations of the CWA or of this Order committed by Respondent.
72. The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal penalties for violations of the CWA. Specifically, EPA may:
- a) assess civil administrative penalties under 33 U.S.C. § 1319(g) and 40 C.F.R. Part 19 of up to \$16,000 per day of violation up to a total of \$187,500, for violations of Section 301 of the CWA that occurred after December 6, 2013 through November 2, 2015; and up to \$21,933 per day of violation up to a total of \$274,159, for violations of Section 301 of the CWA that occurred after November 2, 2015 and for which penalties are assessed on or after February 6, 2019.
 - b) seek civil injunctive relief and penalties for violations of the CWA under 33 U.S.C. § 1319(b) and civil judicial penalties for violations of this Order under 33 U.S.C. § 1319(d). In accordance with 40 C.F.R. Part 19, EPA may seek civil judicial penalties of \$37,500 per day of violation for violations that occurred after December 6, 2013 through November 2, 2015; and up to \$54,833 per day of violation for violations that occurred after November 2, 2015 and for which penalties are assessed on or after February 6, 2019, or as penalty levels may be later adjusted at 40 C.F.R. Part 19; and
 - c) seek criminal penalties, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).

VIII. EFFECTIVE DATE

73. This Order shall become effective upon signature by EPA below and will remain in effect until EPA has notified Respondent of termination of the Order pursuant to paragraphs 74 or 76.

IX. FINAL REPORT AND TERMINATION OF THIS ORDER

74. EPA may terminate this Order at any time by written notice to Respondent.
75. Absent the notice described in paragraph 74 and within 30 days after Respondent concludes that it has achieved compliance with all requirements of this Order, Respondent must submit to the EPA Case Manager a written final report and certification of completion describing all actions taken to comply with all requirements of this Order. Respondent must follow the procedures set forth at Section VI of this Order.
76. After receipt and review of Respondent's final report and certification of completion submitted pursuant to paragraph 75, EPA will notify Respondent whether it has satisfied all

requirements of this Order under the procedures set forth at Section VI of this Order. If EPA concludes that Respondent has failed to satisfy the requirements of this Order, EPA may require further actions as set forth under this Order or it may pursue administrative or civil judicial actions.

FOR RESPONDENT, BAD RIVER BAND OF LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS:

Signature

Date

Name

Title

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Michael D. Harris
Acting Division Director
Enforcement and Compliance Assurance
Division

Date

Bad River WWTP/Birch Hill Stabilization Lagoon AOC

ATTACHMENT A – EFFLUENT LIMIT EXCEEDANCES

Bad River WWTP/Birch Hill Stabilization Lagoon AOC